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ARBITRATOR

# Evidence in Arbitration

OR

## Evidence?! We Don't Need No Stinkin' Evidence!\*

\* Because we have the \_\_\_\_\_ (law, right, power, God) on our side.

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## As a Starting Point ...

### PRO TIP #1

The one foolproof  
surefire way not to  
lose in arbitration:  
**DON'T GO!**

If you settle, you  
have some control  
of outcome

If you go, you give  
up any control, no  
matter how good  
your case

Except in rare  
cases, there are  
only three possible  
outcomes

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If you didn't follow the first tip ...

## Pro Tip #2

This is your second-best chance at  
not losing -

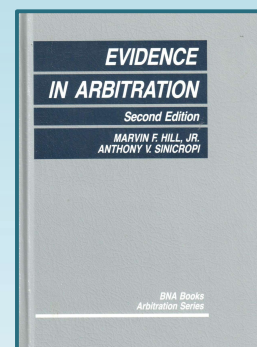
**BE PREPARED**

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## Pro Tip #3

**BUY THIS  
BOOK**

If you want to know more or just want a  
resource, buy this book (if you can find  
an affordable copy)



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## WHY DO I NEED IT?



Foundation of your case

Every witness and every document should have purpose

Build toward the conclusion you want arbitrator to reach

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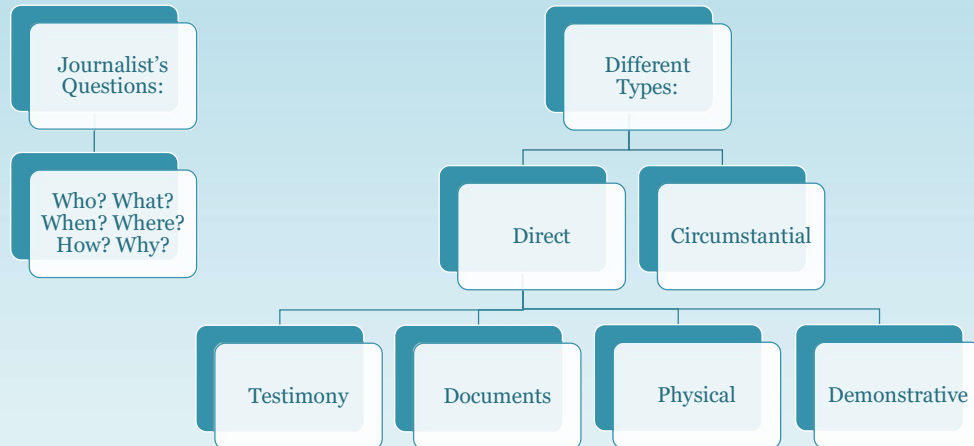
## BUILDING YOUR CASE:

- Know and understand the elements of your case
- Know what evidence you will need to prove those elements: what happened, who was there, etc.
- Put it all together
  - Gather the evidence (documents, witnesses)
  - Understand the other side's case
  - Tie it all to the CBA



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## WHAT IS IT?



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## WITNESS TESTIMONY



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## OTHER DIRECT EVIDENCE

### Documents:

- Business records, Pictures, Email

### Physical

- Work Product

### Demonstrative

- Charts, Site visits

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## CIRCUMSTANTIAL EVIDENCE:

Not direct

Evidence that supports an inference

Inference must be sufficiently strong that conclusion is more likely than not

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## HOW MUCH IS ENOUGH?



- “The weight of the evidence”
- Enough to prove critical elements
- Not so much that key points get lost
- One good witness is better than five mediocre ones
- It’s not who has most – it’s who has best



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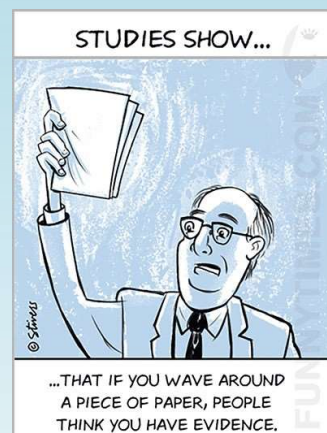
## WHAT IS NOT EVIDENCE:

OPINION\*

ALLEGATIONS

ASSUMPTIONS

IMPRESSIONS

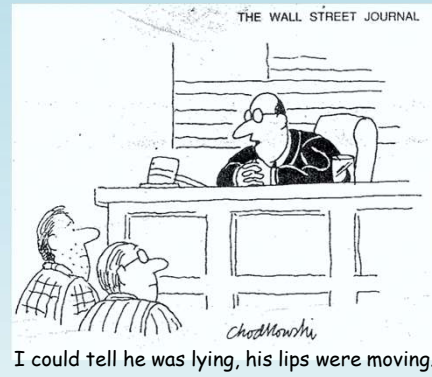


\* Except expert testimony

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## EVIDENCE MUST BE:

Relevant	Credible	Admissible
Tends to prove material fact	Demeanor Nature of Testimony Witness's Interest	Evidence may be excluded for various reasons (privileged, improperly gathered, etc.)



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## HEARSAY

Witness testimony not from personal knowledge

Basically just repeating what they have heard

Don't rely on

Even if arbitrator allows, will unlikely be given much weight

Problematic because not subject to cross-examination

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## OTHER ISSUES

- ☐ Adverse witnesses
- ☐ Impact of available evidence not offered
- ☐ Admissions
- ☐ Presumptions
- ☐ Official notice
- ☐ Surprise evidence
- ☐ After-acquired evidence
- ☐ Post-discharge evidence
- ☐ Objections to evidence

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## ARBITRATION AND THE RULES OF EVIDENCE

Purpose of rules is to help ensure reliability

Generally don't apply – not a court

But some arbitrators more formal than others

And some disputes require more formal approach

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## TRIVIA QUIZ #2

If the facts are  
against you, argue  
the law

If the law is against  
you, argue the facts

If both the facts and  
the law are against  
you, pound the table  
and yell like hell

